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Attorney for Defendant and Counterclaimant
T.B. PENICK & SONS, INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

SUNBELT RENTALS, INC. a/k/a SUNBELT
RENTALS – REGION 8

Plaintiff,

v.

T.B. PENICK AND SONS, INC.,
WP WEST BUILDERS CALIFORNIA L.P.,
and RLI INSURANCE COMPANY,

Defendants.

CASE NO.: 4:20-cv-04039-YGR

JUDGE: Hon. Yvonne Gonzalez Rogers

**T.B. PENICK & SONS, INC.’S
COUNTERCLAIM AGAINST SUNBELT
RENTALS, INC. a/k/a SUNBELT
RENTALS – REGION 8 FOR BREACH OF
CONTRACT**

Complaint Filed: June 17, 2020

Amended Complaint Filed: July 21, 2020

[DEMAND FOR JURY TRIAL]

T.B. PENICK AND SONS, INC., a California
corporation,

Counterclaimant,

v.

SUNBELT RENTALS, INC. a/k/a SUNBELT
RENTALS – REGION 8, a North Carolina
corporation,

Counter-Defendant.

1 Defendant and Counterclaimant T.B. Penick & Sons, Inc. (“Penick”) files this counterclaim
2 against Sunbelt Rentals, Inc. a/k/a Sunbelt Rentals – Region 8, as follows:

3 **PARTIES**

4 1. Penick is, and at all relevant times was, a corporation duly organized and existing
5 under and by virtue of the laws of the State of California, and licensed by the State of California to
6 perform the work described below.

7 2. Penick is informed and believes plaintiff and counter-defendant Sunbelt Rentals, Inc.
8 a/k/a Sunbelt Rentals – Region 8 (“Sunbelt”) is, and at all relevant times was, a corporation duly
9 organized and existing under and by virtue of the laws of the State of North Carolina, doing business
10 in California, with its principal place of business in South Carolina.

11 **JURISDICTION AND VENUE**

12 3. Jurisdiction is proper under 28 U.S.C. § 1367 as to Penick’s counterclaim as it is a
13 compulsory counterclaim arising out of the same transaction or occurrence as alleged in the
14 Amended Complaint, and does not require adding another party over whom the court cannot obtain
15 jurisdiction.

16 4. Venue is proper under 28 U.S.C. § 1391(b)(2) as a substantial part of the events or
17 omissions giving rise to these counterclaims occurred, the Project at issue is situated, and the
18 contracts at issue were executed and/or performed, in this judicial district.

19 **FACTUAL BACKGROUND**

20 5. This action arises out of a private work of improvement known as Alta Potrero Hill
21 (“Project”), located at 1301 16th Street, San Francisco, California, and associated with Assessor’s
22 Parcel Number 3954-016 (“Property”).

23 6. Wood, as Project owner, and Penick, as contractor, entered into a contract on or about
24 December 5, 2017, in connection with the Project (“Construction Contract”), a true and correct copy
25 of which is attached as Exhibit 1 to this pleading and incorporated herein by reference.

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7. On or about October 10, 2019, Sunbelt, as subcontractor, and Penick, as general contractor, entered into a subcontract pursuant to the Construction Contract, for the provision of, among other things, services related to dehumidification (“Subcontract”). A true and correct copy of the Subcontract is attached as Exhibit 1 to this counterclaim and incorporated herein by reference.

FIRST COUNTERCLAIM FOR RELIEF

(Breach of Contract – Against Sunbelt)

8. Penick realleges and incorporates by reference paragraphs 1 through 7, above, as though set forth in full at this point.

9. Penick performed all conditions, covenants and promises required on its part to be performed in accordance with the terms and conditions of the Subcontract, or was excused from performance.

10. Within the last four years, Sunbelt breached the Subcontract by, among other things, failing to properly invoice pursuant to the terms and the Subcontract, and failing to return overpayments on work performed under the Subcontract.

11. As a direct and proximate result of Sunbelt’s breach of the Subcontract, Penick has been damaged in a sum not yet fully ascertained and subject to proof but approximately \$106,700, together with interest at the maximum legal rate from dates according to proof.

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PRAYER FOR RELIEF

Accordingly, Counterclaimant T.B. Penick & Sons, Inc. requests entry of judgment as follows:

ON ALL CAUSES OF ACTION:

1. For damages in an amount subject to proof, but approximately \$106,700,
2. For prejudgment interest on all sums at the maximum rates and from dates according to proof;
3. For costs of suit; and
4. For such other relief the Court deems just.

DATED: October 14, 2020

MARKS, GOLIA & PINTO, LLP

By: /s/ Davide Golia
DAVIDE GOLIA
Attorneys for Defendant and Counterclaimant,
T.B. PENICK & SONS, INC.

DEMAND FOR JURY TRIAL

Defendant and Counterclaimant T.B. Penick & Sons, Inc. hereby demands a trial by jury.

DATED: October 14, 2020

MARKS, GOLIA & PINTO, LLP

By: /s/ Davide Golia
DAVIDE GOLIA
Attorney for Defendant and Counterclaimant,
T.B. PENICK & SONS, INC.